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## Rethinking Responsibility as Cooperation and Control: The Case of Intelligence Agents

Raphael Bitton

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# **Rethinking Responsibility as Cooperation and Control**

## **– The Case of Intelligence Agents**

*Raphael Bitton\**

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*To what extent is a handler morally and legally responsible for the results of his agent's actions as a human intelligence source? This article addresses responsibility towards a person (accountability) rather than for a specific event (attribution). Handling is a type of cooperation, which requires that cooperating persons make concessions regarding preferences either voluntarily or under coercion. This article, therefore, analyzes cooperation in terms of control over the preferences of another person. It offers a link between control and responsibility following the free-will paradigm, arguing that one exceptional characteristic of handling is the level of control the handler exercises over the agent. This control is unique in that it combines both coercive and voluntary grounds. In*

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*standard cooperative relationships, these sources of control are typically exclusive to one another, so a person is either willing or coerced to cooperate. This article shows that in handling, the two sources of control co-exist uniquely. As control is exceptionally potent in handling, this paper argues for a broad range of accountability towards agents by their handlers, who represent the employing state's responsibility. As control is a marker of responsibility, gaining and losing control serve as indications for ascribing and waiving responsibility. The control-based approach can assist in determining the scope of responsibility towards an agent in typical handling patterns. It also assists in tackling theoretical issues concerning the defense of the Execution of Public Duty and the theoretical concept of Role Distance, showing that their rationale, in fact, signals when control over the relations is in force or absent. As this article seeks to study the general link between relationships of control and moral and legal responsibility in cooperative relations, its conclusions will be, therefore, relevant to other cooperative human interactions and their patterns of control.*

## I. INTRODUCTION

To what extent is a handler morally and legally responsible for the actions of an agent as a human intelligence asset and their consequences? The practice of gathering intelligence from human sources is both old and broad. The question of the handler's responsibility seems curiously neglected by scholars. Simple answers that depend on a notion of contract between handler and agent are insufficient.<sup>1</sup> Even if we accept the view that the handler-agent relationship is some form of contractual relation, their contracts are typically silent on the scope and division of responsibility for the operation's consequences.<sup>2</sup>

Though focused, this question requires consideration of a large number of issues. Of what kind of responsibility do we speak? Why should the handler be held responsible for the

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<sup>1</sup> See generally Raphael Bitton, *Intelligence Agents, Autonomous Slaves and the US Supreme Court's Wrong (and Right) Concept of Personal Autonomy*, 7 EUR. J. LEGAL STUD. 4 (2014). But see *Totten v. United States*, 92 US 105 (1875) 105; *Tenet v. Doe*, 544 US 1 (2005) (expressing the contractual view on handler-agent relationship).

<sup>2</sup> The case of Goung offers an exception. *Goung v. United States*, 860 F.2d 1063 (Fed. Cir. 1988). While working for US Intelligence in Vietnam, the CIA promised Goung that if caught, the CIA would rescue him. He also argued that his handlers pledged to take care of his family. Goung maintains that the CIA broke both promises. Based on the *Tennet* and *Totten* rules, Goung could not even file his contractual claim in court. In contrast, one other potential normative source of responsibility may be statutory. For instance, in the United Kingdom, there is a mandatory statutory duty for the handler to secure the agent's welfare and security. Regulation of Investigatory Powers Act of 2000 § 29(4A)(a).

agent's actions? What is the moral basis for ascribing responsibility to the handler? Handler-agent relations are a particular example of cooperative ties.<sup>3</sup> Although the case of handling an agent is extreme and unique, its moral and legal analysis touches surprisingly on issues that are universal and relevant to other patterns of cooperation.

Consider agent *A* operated by handler *H*. *H* recruited *A* from within the ranks of an adversary army.<sup>4</sup> Since recruitment, *H* clandestinely handles *A* as an agent, namely as a source of human intelligence. *H* sends *A* on an ambitious and dangerous mission. *A* subsequently is apprehended by the adversary's counterintelligence services. His captors interrogate him violently and prosecute him for espionage. Eventually, the court sentences *A* to 20 years in harsh prison conditions. As *A* sits in his prison cell, he calculates the damages he suffers due to his services as an agent. He holds *H*, the intelligence organization employing him, and the organization's state responsible for his release. If *A*'s family is in danger due to his exposure, *A* probably expects protection and/or rescue by said state. Moreover, he believes *H* and his state are responsible for harms he endured, including his torture, bodily harm, time in prison, loss of income, implications for his future welfare, and harm to his family. Is *H* responsible for the unfortunate results of handling *A* in the sense that *A* expects?

Twenty years later, his captors release *A* from prison. He then hears that *H*, who retired as a high-ranking intelligence officer, is about to be appointed Minister of Defense in his country, *A* files a petition, arguing that *H* is responsible for overly risky handling, and therefore

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<sup>3</sup> See generally *Human Intelligence Collector Operations*, DEP'T OF THE ARMY (Sept. 2006), <https://fas.org/irp/doddir/army/fm2-22-3.pdf>.

<sup>4</sup> This article refers to agents recruited from the ranks or population of the adversary. I do not refer to recruitment and handling that take place through law enforcement. There are many similarities between handling agents drawn from both external and internal contexts. Some of the moral analysis that this article proposes may be relevant to handling agents in law enforcement, but there are also moral and legal differences. These differences justify tackling the question of responsibility for handling in law enforcement in a separate work. On the difference between foreign and domestic intelligence, see generally RICHARD A POSNER, *UNCERTAIN SHIELD: THE US INTELLIGENCE SYSTEM IN THE THROES OF REFORM* (Rowman & Littlefield 2006).

*H* is responsible for the harm and losses he suffered. As a result, *A* argues that *H* cannot and should not be promoted. Is *H* responsible for *A*'s handling in this sense as well? These questions of responsibility demand both moral and legal discussions. This paper seeks to establish a basis for the moral analysis of these neglected questions to provide a basis for legal doctrine.

The agent may consider the handler responsible for his suffering, as the handler's actions brought it about. This claim of responsibility is argued in terms of *attribution*.<sup>5</sup> The agent may also claim that the handler or employing state is responsible for his wellbeing should any tangible, financial, or mental harm result from his activity. This claim of responsibility is argued in terms of *accountability*.<sup>6</sup> In other words, the responsible entity should remedy the harm for which it is responsible and face broader consequences for the event for which it is held accountable.<sup>7</sup> These claims are linked, but do not necessarily overlap. Typically, one is accountable for the undesired result of *X*, because we attribute *X* to him.<sup>8</sup> However, in some cases, one can be held accountable for events for which one isn't responsible.<sup>9</sup> One may even be held accountable for an event that is not attributed to him.<sup>10</sup>

This paper seeks to frame a concept of responsibility for the consequences of handling. Responsibility for these consequences, however, must be determined in tandem with the issue

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<sup>5</sup> For the definition of responsibility as attribution and accountability, see Gary Watson, *Two Faces of Responsibility*, 24 PHIL. TOPICS 227 (1996).

<sup>6</sup> *Id.*

<sup>7</sup> A good example would be the complaints of Jonathan Pollard against his handlers, mainly Raphael Eitan. Pollard even petitioned against Eitan's appointment as minister, arguing that his responsibility for his situation required that he be denied such an appointment (HCJ 3648/06 Pollard v. Acting Prime Minister).

<sup>8</sup> See generally Daniel McGillis, *Attribution and the Law*, 2 L. AND HUM. BEHAV. 289, 290 (1978), <https://link.springer.com/article/10.1007/BF01038982>.

<sup>9</sup> See, e.g., Matthew A. Pauley, *The Pinkerton Doctrine and Murder*, 4 U.N.H.L. REV. 1, 3 (2005), [https://scholars.unh.edu/cgi/viewcontent.cgi?article=1056&context=unh\\_lr](https://scholars.unh.edu/cgi/viewcontent.cgi?article=1056&context=unh_lr).

<sup>10</sup> For instance, a parent may feel accountable for a wrong action done by its adult son although the parent is not responsible for the outcomes of such action. An employer may be responsible for *X* caused by its employee regardless of *x* not being attributable to the employer. *X*, in this case, could be an event caused by the employee while the employer was not related or aware of *X*.

of causation.<sup>11</sup> Some points will reference only responsibility for handling, without addressing different types of responsibility and its contexts. Rather, it merely positions the argument with regard to a more fundamental point. In a sense, this paper attempts to understand agent handling in a more profound sense that is relevant to most claims and types of responsibility. Such understanding is direly needed. Even in the rare cases that states admit to handling an agent and assume responsibility for that agent, the meaning and scope of the assumed responsibility is unclear.<sup>12</sup> Although this paper explicitly addresses responsibility for handling an agent, handler-agent relations described here are merely case studies. Extreme cases of handling demonstrate the moral significance of control within cooperative relationships. Case studies of handler-agent relationships demonstrate different types of control relationships and sources of control.<sup>13</sup> As this article addresses the typical handling of human intelligence sources, it seeks to study the general link between controlled relationships and forms of moral and legal responsibility. Its conclusions will be, therefore, relevant to other human interactions and its insights relevant to other patterns of control.

The critical element in the moral analysis of responsibility for handling is the element of control. More precisely, it is the element of cooperation through the means of control. The handler and the agent generally maintain an asymmetrical cooperative relationship. They cooperate for the sake of gathering intelligence clandestinely. They may also cooperate in order to perform other undercover operations. They typically affiliate with adversarial parties. As the

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<sup>11</sup> On the deep ties between moral responsibility for an outcome and causation, see Carolina Sartorio, *Causation and Responsibility*, 2 PHIL. COMPASS 749 (2007).

<sup>12</sup> See, for instance, Israel's announcement admitting to handling Pollard in the US: "acknowledged that he was handled by high-ranking officials in a scientific relations bureau...In light of this fact, the State of Israel acknowledges its obligation to Mr. Pollard and is ready to accept full responsibility accordingly...". *Israel Admits It Spied on the US*, BBC (May 12, 1998, 07:07 GMT), <http://news.bbc.co.uk/2/hi/americas/91260.stm>.

<sup>13</sup> See Joseph A. Wippl, *The Art of Agent Handling*, 32 INT. J. INTEL. AND COUNTERINTEL., 781 (2019) (detailing how CIA handlers recruit and interact with agents).

agent typically comes from within the ranks of an adversary army, intelligence organization, or society, cooperating with the enemy seems irrational. Cooperation is nonetheless established.

The compelling and morally relevant aspects of cooperation are its grounds. As terms of control define the dynamics of cooperation, its grounds are central to understanding moral responsibility for handling. Generally, in cooperative relationships, parties establish control based on two possible grounds. One is grounded in voluntary submission for a variety of possible interests; the other is grounded in coercive measures. Generally, these grounds of control are mutually exclusive. When one party establishes cooperation through voluntary control, coercion is unnecessary; when cooperation is coerced, it is, by definition, involuntary. However, handler-agent cooperation is unique in that both grounds of control often apply simultaneously. Handlers primarily control agents through compelling psychological ties. At the same time, potential threat of exposure by the handler hovers over the relationship.

Control is a powerful marker of moral and legal responsibility.<sup>14</sup> As a marker of responsibility, the element of control can help solve practical legal and moral issues related to responsibility for handling. The magnitude of control in handling relationships can indicate the magnitude of responsibility for the controlled agent's actions and wellbeing and the consequences of the handling. Accordingly, events of loss of control can indicate the end of responsibility for the handling.

It is essential to clarify that this article does not offer a comprehensive account of every

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<sup>14</sup> In many cases, we intuitively link responsibility with free choice. And free choice, in turn, should be associated with control over one's actions and preferences. Intuitively, a person cannot control his actions if he has only one available course of action. That is the case if one person controls the actions of another person. Parents, teachers, commanders, and leaders are all examples of people who exercise some level of control over other people. And they all accordingly bear some level of responsibility for the results of such cooperative relations. It is most important to mention Frankfurt's opposing view. Frankfurt argues that the lack of an alternative course of action does not necessarily negate moral responsibility. Harry G. Frankfurt, *Alternate Possibilities and Moral Responsibility*, 66 J. OF PHIL. 829, 829-833 (1969).

possible claim of responsibility concerning spying. For instance, it does not offer an account of responsibility for handling in response to a target state's claim. When an espionage-based conflict between states arises, other legal and ethical concepts may become relevant, such as global justice and international law concepts. For instance, such relevant concepts may include the very legitimacy of spying among nations.<sup>15</sup> They may even involve other legal concepts, such as the well-established legal custom that prohibits claims of the enemy.<sup>16</sup>

Section II of this paper offers a deeper understanding of the unique practicalities of recruitment and handling.<sup>17</sup> Section III offers an analysis of the notion of control and its links to moral and legal responsibility.<sup>18</sup> Section IV presents an argument that sketches control as a means of cooperation.<sup>19</sup> Section V suggests various scenarios in which issues of responsibility in handling are best analyzed and solved using the notion of control.<sup>20</sup> Section VI concludes the article.<sup>21</sup>

## II. HANDLER-AGENT RELATIONS

Handler-agent relations are unique in almost every sense. They typically reflect cooperation between formal adversaries. As the handler wishes to gather information about the enemy through the agent, the best potential agent comes obviously from the adversary's ranks. Targeted information may include details about the intentions, plans, capabilities, and condition of the adversary organization or state. The preferred human source for gathering

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<sup>15</sup> See Raphael Bitton, *The Legitimacy of Spying Among Nations*, 29 AM. U. INT'L L. REV. 1009 (2013); For a competing theory, see Asaf Lubin, *The Liberty to Spy*, 61 HARV. INT'L L. J. 185 (2020).

<sup>16</sup> For instance, a claim of an agent may be affected by the rule that courts do not hear claims made by the enemy or enemy nationals during a conflict. The agent himself may be an enemy national. However, once recruited and handled, he may not be treated as an enemy national for the sake of a responsibility-based claim. For instance, a different, although generally similar is the case of Dirani against the State of Israel. See Additional Hearing (Civil) 5698/11 The State of Israel v. Mustafa Dirani (Hebrew).

<sup>17</sup> See *infra* § II.

<sup>18</sup> See *infra* § III.

<sup>19</sup> See *infra* § IV.

<sup>20</sup> See *infra* § V.

<sup>21</sup> See *infra* § VI.

such information is a soldier, an intelligence officer, a commander, or a political figure affiliated with an adversary. The more senior agents are in the ranks of the adversary, the better the information they can offer. The more willing the agents are, the more effective their handling. The inherent difficulty lies in the fact that the handler must recruit the agent from among the personnel most trusted by the adversary, but the adversary's most trusted people are unlikely to cooperate with the enemy.<sup>22</sup>

Recruiters and handlers depend on vulnerabilities in human nature. Some agents are recruited through exploiting mental instability.<sup>23</sup> Others are recruited through identifying bitterness and grievance toward their own side.<sup>24</sup> Others are swayed through sheer greed.<sup>25</sup> Some are recruited because their personal ideology deeply conflicts with beliefs and/or practices of their own side.<sup>26</sup> Theoretically, recruitment can also be the result of coercion. However, despite conventional beliefs, most agents are not coerced during their recruitment phase.<sup>27</sup> This makes sense as coerced agents are likely to be awful agents. Regardless of the

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<sup>22</sup> Not all agents are recruited from within the ranks of the adversary. Some agents are neutral persons who happen to have access to some asset that an intelligence service needs.

<sup>23</sup> For a psychological analysis of typical agents, see Ursula M Wilder, *The Psychology of Espionage*, 61 *STUD. IN INTEL.* 19, 20 (2017). For empirical data suggesting a correlation between the tendency to become an agent and behavioral issues, see MARTIN F. WISKOFF & CHRISTOPHER C. FITZ, *THE DEFENSE INVESTIGATIVE SERVICE'S ISSUE CASE DATA BASE: ANALYSIS OF ISSUE TYPES AND CLEARANCE ADJUDICATION* (Def. Pers. Sec. Rsrch. and Educ. Ctr. 1991); SUZANNE WOOD & MARTIN F. WISKOFF, *AMERICANS WHO SPIED AGAINST THEIR COUNTRY SINCE WORLD WAR II* (Defense Personnel Security Research Center Monterey, CA. 1992).

<sup>24</sup> On disgruntlement as a motivation for recruitment, see Stan A. Taylor & Daniel Snow, *Cold War Spies: Why They Spied and How They Got Caught*, 12 *INTEL. AND NAT'L SEC.* 101, 107–08 (1997). This motive seems to be showing growing importance as time passes.

<sup>25</sup> The case of Aldrich Ames seems to match this pattern. US Congress, *Senate, Select Committee on Intelligence, 1 November 1994, AN ASSESSMENT OF THE ALDRICH H. AMES ESPIONAGE CASE AND ITS IMPLICATIONS FOR US INTELLIGENCE*. Empirical data shows that as time passed from the 1950s to the 1960s, financial motivation became more common for agents that operated against the US. See WOOD & WISKOFF, *supra* note 23.

<sup>26</sup> On ideology as a motivation for agents, see Taylor & Snow, *supra* note 24, at 104–06. Ideology seems to be in decline as a significant motive. For a relatively recent case of ideology-based spying, see the case of Mordechai Vaanunu, a nuclear technician who exposed secret information on Israel's alleged nuclear weapon program. Yoel Cohen, *Vaanunu, The Sunday Times, and the Dimona Question*, 16 *ISRAEL AFFAIRS* 416, 431 (2010).

<sup>27</sup> Richards J. Heuer, Jr. & Katherine Herbig, *Espionage by the Numbers: A Statistical Overview*, DEFENSE PERSONNEL SECURITY RESEARCH CTR. (Nov. 28, 2001), [https://www.wrc.noaa.gov/wrso/security\\_guide/numbers.htm](https://www.wrc.noaa.gov/wrso/security_guide/numbers.htm).

motive, recruitment commonly involves manipulation, deception, or fraud.<sup>28</sup> In most of the non-coercive patterns, the agent will be handled based on consent.<sup>29</sup> However, even the most willing agent cannot be deemed autonomous, even theoretically.<sup>30</sup> In a cursory summary, one can say that designated agents may consent freely to recruitment, but once recruited, potential extortion hangs over the relationship with the handler. An agent is, therefore, in a position into which one may enter freely, but is rarely allowed to exit with a level of freedom sufficient to deem the agent autonomous.<sup>31</sup>

Using personal vulnerabilities to identify and develop a competent agent requires a process. Subsequently, a handler needs to handle the agent. As an undercover agent is dispatched to undertake very complicated and risky tasks, the handler needs to address the agent's safety and wellbeing. Simultaneously, the handler needs to gather high-quality intelligence and perform clandestine tasks through the agent. The handler must accomplish all this without alerting anyone in the agent's surroundings and the adversary's counterintelligence services.<sup>32</sup> The process of turning an adversary into a cooperative ally is emotionally and operationally complicated and the craft of handling requires special skills. The skills of the handler must indeed address the psychological and operational challenges of recruitment and handling.

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<sup>28</sup> Take, for instance, the case of "false flag" handling. It is a method of handling an agent by deceiving the agent regarding the affiliation of the handler. This method can bypass some expected hostility by the designated agent. Fooled into believing that he works for another, and probably more favorable party, the agent may be more willing and motivated under this pattern of handling. Bitton, *Intelligence Agents*, *supra* note 1, at 10–11.

<sup>29</sup> See generally Heuer & Herbig, *supra* note 27.

<sup>30</sup> Bitton, *Intelligence Agents*, *supra* note 1.

<sup>31</sup> See generally Heuer & Herbig, *supra* note 27.

<sup>32</sup> See, for example, criticisms of the Israeli GSA concerning the handling of Avishai Raviv within the circles of right-wing extremists in the West Bank. In the course of handling, and for the sake of establishing Raviv's reliability, the GSA allegedly initiated extreme and harmful actions. See Criminal Case 2070/99 State of Israel v. Avishai Raviv (Jerusalem, unpublished). Similarly, the Attorney General issued a detailed order, in which clear rules were given to the FBI on the limits of illegal activity of human sources. The order sets limits to authorizing unlawful activity in the course of developing agents' reliability. See The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (Dec. 2006), Ch. V §§ 1–10.

What does it mean to be psychologically skilled? In practice, it means to create the kind of trust and willingness on the part of the agent, so that he agrees to cooperate and to assume exceptional risk continuously. At the same time, the handler must maintain some level of authority, as the agent must not act in an uncontrolled manner. An uncontrolled agent might become reckless or negligent, which might prove deadly or result in lengthy prison time. An uncontrolled agent might also bring about operational failures. These might result in the loss of intelligence and the exposure of other agents, secret sources, and methods. If apprehended due to uncontrolled conduct, an agent might incite military or diplomatic tension. An uncontrolled agent could eventually feed his handler false information that might distort the intelligence picture. The conclusion is clear; the handler must maintain a sufficient level of authority over the agent. Authority is supposed to enable the successful completion of the agent's missions and keep the agent safe and guard the secrecy of the mission.

The role of the handler seems to involve an inherent contradiction that generates a unique moral condition. On one hand, the handler aspires to be the agent's very committed and closest colleague. An agent might not continuously risk his life, liberty, and family for someone less meaningful. On the other hand, the handler cannot merely be the agent's best friend. Handlers must maintain a high level of control for reasons of safety and efficiency. Friends, however, do not *control* one another. Therefore, the relationship must assume an irregular pattern in which the handler simultaneously maintains two contradictory types of relationships with another person.<sup>33</sup> Namely, relations in which one is both *close* and *authoritative* vis a vis the same person. Parents and educators may face the same

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<sup>33</sup> See, e.g., *Agent Handlers*, SECURITY SERVICE MI5, <https://www.mi5.gov.uk/careers/agent-handlers> (last visited April 19, 2021) (detailing that agent handlers need to have effective relationship building skills and are responsible for the safety of their assets).

contradicting requirements. Below, I show that this unique pattern of relationship is directly linked to the level of responsibility for an agent's actions, safety, and wellbeing.<sup>34</sup>

This unique psychological and practical pattern lies at the heart of the proposed moral analysis of handling, as focus on its uniqueness informs the question of moral responsibility. It is essential to note, however, that handler-agent relations entail other moral implications. These revolve mainly around the vast moral harm that results from handling.<sup>35</sup> Understanding the harm that espionage entails relates to the issue of the handler's responsibility.

As with any morally questionable governmental activity, human espionage entails harmful and grave consequences.<sup>36</sup> The scope of the harm is surprisingly broad. So is the number of people it affects. It includes the designated agents and the recruited agents. The handler uses the agent instrumentally, putting him at a considerable risk of imprisonment or death.<sup>37</sup> The circle of harm further includes the agent's family and close acquaintances. They share risk of punishment, arrest, interrogation, and social condemnation.<sup>38</sup> If applied widely, HumInt activity may drag many into the circle of harm, even the targeted community as a whole, as it has the potential of destroying social ties of trust and solidarity.<sup>39</sup> Unintuitively,

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<sup>34</sup> See *infra* § III.

<sup>35</sup> On the moral harm resulting from handling agents, see Bitton, *The Legitimacy of Spying*, *supra* note 15, at 1010–11; Ross Bellaby, *What's the Harm? The Ethics of Intelligence Collection*, 27 INTEL. AND NAT'L SEC. 93, 98–104 (2012); John P Langan, *Moral Damages and the Justification of Intelligence Collection from Human Sources*, in ETHICS OF SPYING. A READER FOR THE INTELLIGENCE PROFESSIONAL (Jan Goldman ed. 2006); David L Perry, "Repugnant Philosophy": *Ethics, Espionage, and Covert Action*, 15 J. OF CONFLICT STUD. 1, 19 (1995).

<sup>36</sup> See, e.g., Michael Kilian, CIA SAYS AMES EXPOSED HUNDREDS OF FOREIGN AGENTS, CHICAGO TRIBUNE (Mar. 6, 1997), <https://www.chicagotribune.com/news/ct-xpm-1997-03-06-9703060164-story.html> (detailing the extent of consequences to Soviet citizens as a result of Aldrich Ames' espionage).

<sup>37</sup> CHRISTINE M. KORSGAARD, KANT: GROUNDWORK OF THE METAPHYSICS OF MORALS AK: 4: 429 (Cambridge Univ. Press 2012) ("So act that you use your humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as means."); Perry, *supra* note 35, at 229.

<sup>38</sup> On the horrible effect that running an agent can have on family and friends, even in a western democracy, Le Carre's novel, *A Perfect Spy*, offers an extraordinary realistic account. JOHN LE CARRÉ, *A PERFECT SPY: A NOVEL* (Penguin 2011).

<sup>39</sup> History offers a few clear cases. McCarthyism, the Soviet purges, and the Palestinian hunt for collaborators are all shocking examples. On the history of Palestinian agents for the Israeli intelligence, see HILLEL COHEN, *ARMY OF SHADOWS: PALESTINIAN COLLABORATION WITH ZIONISM 1917–1948* (U.C. Press 2009). On the Palestinian reaction to Israel's successful HumInt collection, see YOSIF MAHMOUD HAJ-YAHIA, *ALLEGED PALESTINIAN*

handlers and their families also bear the burden of harm. Full-time work in an instrumental dirty-hands job can hardly leave a person unaffected emotionally.<sup>40</sup> Even the recruiting state and its society bear part of the cost of human espionage. The employing government must verify that its officers never apply methods that they apply to adversaries within its government.<sup>41</sup> These damages are all added to the direct economic cost of conducting such vast human activity. As the harm of handling agents becomes apparent, the relevance of responsibility similarly comes into focus. What is the handler/state's part in the responsibility for the agent's suffering and harm? The answer begins in an analysis of the moral meaning of control within cooperative relations.

### III. RELATIONS OF CONTROL

A perfect agent, from the handler's perspective, is fully controlled and serves as an extension of the handler within the target society or organization. The process of identifying a potential source and transforming him from an adversary into a collaborator is far from trivial.<sup>42</sup> In many cases, the process will be gradual, so the agent proceeds through small steps, not fully aware of crossing the point of no return.<sup>43</sup> Unless he eventually reaches a high level of

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COLLABORATORS WITH ISRAEL AND THEIR FAMILIES: A STUDY OF VICTIMS OF INTERNAL POLITICAL VIOLENCE § 12 (Harry S. Truman Rsrch. Inst. for the Advancement of Peace, Hebrew 1999). By 1999, Haj-Yahia estimated that hundreds of Palestinian were killed by their own people based on suspected collaboration with Israel's intelligence. For a combined historical and legal analysis of Palestinian reactions to the massive Israeli HumInt activity, see Ron Dudai & Hillel Cohen, *Triangle of Betrayal: Collaborators and Transitional Justice in the Israeli-Palestinian Conflict*, 6 J. OF HUMAN RIGHTS 37, 41 (2007). On the social impact of McCarthy's activities, see RICHARD M. FRIED, *THE MCCARTHY ERA IN PERSPECTIVE: NIGHTMARE IN RED* 124 (Oxford Univ. Press 1990); ROBERT GRIFFITH, *THE POLITICS OF FEAR: JOSEPH R. MCCARTHY AND THE SENATE 127-29* (Univ. of Mass. Press 1987); RICHARD GID POWERS, *NOT WITHOUT HONOR: THE HISTORY OF AMERICAN ANTICOMMUNISM* 271 (Yale Univ. Press 1998).

<sup>40</sup> On the potentially harmful effect to the handlers themselves and close circles, see Langan, *supra* note 35, at 112–13.

<sup>41</sup> On the risks of the use of the methods of HumInt within the ranks of the employing government, see J. E. Drexel Godfrey, *Ethics and Intelligence*, in *ETHICS OF SPYING: A READER FOR THE INTELLIGENCE PROFESSIONAL* 8 (2006).

<sup>42</sup> Langan, *supra* note 35.

<sup>43</sup> MILES COPELAND, *THE REAL SPY WORLD* 127–28 (Weidenfeld & Nicolson 1974).

control, the agent cannot be deemed fully recruited and cannot be effectively handled.<sup>44</sup>

*A. The moral significance of control*

Control in handling affects two distinctive moral aspects of espionage. First, using human beings instrumentally, characteristic handler-agent relations raise the need for proper justification, something beyond the scope of the present article. Secondly, the characteristic control involved in handling agents and its uniqueness affects the moral consequences of such relations when they are deemed justifiable. Responsibility for handling refers to such consequences.

In many cases, we intuitively link responsibility with free choice. Free choice, in turn, should be associated with control. When person *A* controls person *B*, *A* decides what *B* will do. In other words, when *A* controls *B*, *A* has the freedom to choose among alternatives for what *B* will do. Therefore, if *B*'s actions are a result of *A*'s free choice, it makes sense to view *A* as responsible for *B*'s actions and the consequences of these actions.<sup>45</sup> The notion of control, therefore, is, in fact, a responsibility base. The controlling person is responsible for the consequences of the controlled person's actions.

Parents, teachers, commanders, and leaders are examples of people who exercise some control over others. Accordingly, we see controlling people as bearing some responsibility for those under their control.<sup>46</sup> The free-will paradigm grounds this link between control over the

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<sup>44</sup> WILLIAM HOOD, *MOLE* 29 (WW Norton & Co. 1982); Perry, *supra* note 35, at 230.

<sup>45</sup> On the philosophical ties of control and moral responsibility, see JOHN MARTIN FISCHER & MARK RAVIZZA, *RESPONSIBILITY AND CONTROL: A THEORY OF MORAL RESPONSIBILITY* 14-16 (Cambridge Univ. Press 2000); John Martin Fischer, *Recent Work on Moral Responsibility*, 110 *ETHICS* 93, (1999); John M. Fischer, *The Metaphysics of Free Will: An Essay in Control*, 3 *LEGAL THEORY* 379, (1998). On more historical accounts of the link between control and responsibility, see Randall R. Curren, *The Contribution of "Nicomachean Ethics" iii 5 to Aristotle's Theory of Responsibility*, 6 *HIST. OF PHIL. Q.* 261, 261 (1989).

<sup>46</sup> For control as grounds for mainly criminal and civil liability for another's actions, see Joel Feinberg, *Collective Responsibility*, 65 *J. OF PHIL.* 674, 674-75 (1968). On teachers' liability towards school students, see Reynolds C. Seitz, *Legal Responsibility Under Tort Law of School Personnel and School Districts as Regards Negligent Conduct Toward Pupils*, 15 *HASTINGS L. J.* 495, 496-97 (1964); For commanders' responsibility for the actions of their subordinates, see Ilias Bantekas, *The Contemporary Law of Superior Responsibility*, 93 *AM. J. OF INT'L L.* 573, 573-

process of choosing with responsibility for the consequences of this process.<sup>47</sup> When a person does not control his actions, he does not have any alternative course of action. When he acts according to one available alternative, absent any other and not due to internal motives, he is not making a free choice and, therefore, cannot be deemed responsible for his non-free actions.<sup>48</sup> He is accordingly not considered responsible for the resulting consequences.

The proposed argument requires that we maintain a distinction between patterns of control according to concepts such as vicarious liability. Indeed, the notion of control does not necessarily offer theoretical justification for vicarious liability.<sup>49</sup> The status or position of specific individuals is the basis of vicarious liability.<sup>50</sup> For instance, an employer may be held accountable for his employee's wrongdoing regardless of the employer's involvement in the process of bringing about the wrongdoing.<sup>51</sup> Instead, this argument ascribes moral and legal responsibility to persons in control of the relations with the acting agent.

This argument relates to other patterns of responsibility that reflect the actual circumstances of the cooperating persons' relations, such as a duty of person *A* to care for person *B*. Accordingly, a teacher who exercises a high level of control over a student's acts may be responsible for the resulting consequences, such as when a student causes harm during

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75 (1999). In this work, I avoid the need to define the broad and complicated notion of responsibility, which bears quite a few forms and meanings. Neither do I suggest a distinction between moral and legal responsibility. In principle, this article refers to responsibility in terms of accountability. On the various meanings of responsibility, see Kurt Baier, *Types of Responsibility*, in *THE SPECTRUM OF RESPONSIBILITY* (Peter A. French ed. 1991).

<sup>47</sup> On the profound relations between free will, control, and moral responsibility, see NOMY ARPALY, *MERIT, MEANING, AND HUMAN BONDAGE: AN ESSAY ON FREE WILL* (Princeton Univ. Press 2009); Robert Merrihew Adams, *Involuntary Sins*, 94 *PHIL. REV.* 3, 11 (1985); Watson, *supra* note 6; Angela M. Smith, *Control, Responsibility, and Moral Assessment*, 138 *PHIL. STUD.* 367, 367-68 (2008); Bernard Berofsky, *Free will and determinism*, (1966); SAUL SMILANSKY, *FREE WILL AND ILLUSION* (OUP Oxford 2000).

<sup>48</sup> Frankfurt has shown that a person can be responsible even in cases when that person has practically no alternative courses of action. For instance, when the only alternative available to that person is the very alternative he desires nonetheless. See Frankfurt, *supra* note 14.

<sup>49</sup> Jason W. Neyers, *A Theory of Vicarious Liability*, 43 *ALBERTA L. REV.* 287, 292 (2005). Take for instance, teacher-student relations.

<sup>50</sup> See *id.*

<sup>51</sup> See *id.*

a school trip. The teacher cannot be held accountable if the teacher did not join the trip, as would be the case had teachers been exposed to vicarious liability.<sup>52</sup>

Losing control over ones' actions can mitigate or even cancel out responsibility in terms of blaming, as in the case of a truck driver whose braking system fails, resulting in a collision. Accordingly, control intuitively leads to the simultaneous creation of a responsibility base. Imagine the same truck driver, instead of losing his brakes, becomes the victim of a hacker. If the hacker remotely controls the truck and knowingly steers the truck into a collision, we consider the hacker the responsible party. The moment he gains control over the truck is the moment he seizes freedom of choice. Free choice entails moral and hence legal responsibility for the consequences of such choice. Gaining control over a person or a situation explains why the controlling person *could be* responsible for the controlled person's actions or their consequences. However, gaining control can also explain why the controlling person *should be* responsible. Controlling a situation justifies ascription of responsibility for the situation's consequences to the controlling person. Frequently, the person who controls a situation also controls the creation of entailed risks and the information regarding their optimal minimization.<sup>53</sup> When handlers recruit agents, they gain a substantial level of control over the agent. Just like the hacker who gains control over a truck, the handler gains considerable control over the agent's decision-making process and actions. The handler, therefore, should become morally responsible for the actions of the agent and their consequences.

When it comes to the agent's level of control and free will, (as opposed to the *handler's*) the free will paradigm becomes complicated. If the handler controls the agent, does

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<sup>52</sup> *Id.* at 292.

<sup>53</sup> In terms of law and economy, the controlling person may be in the best position to make the cost-benefit analysis that justifies his responsibility. *See generally* Guido Calabresi & Jon T. Hirschoff, *Toward a Test for Strict Liability in Torts*, 81 YALE L. J. 1055 (1972).

that mean that the agent cannot be morally responsible for his actions? Is the agent in a similar position as a person acting under coercion, duress, or lack of control? A previous article argues that most voluntary agents exercise free will in electing to become agents, yet should not be considered autonomous.<sup>54</sup> The agent may be subject to potential exposure by his handlers. As the agent is aware of the potential threat, the agent is de-facto deprived of his freedom to bring his clandestine activity to an end. A typical agent has no free exit from being handled. He is, therefore, not genuinely autonomous, regardless of him voluntarily accepting the secret role. Put differently, recruited intelligence agents are not autonomous because they tend to exhaust their freedom when they abdicate their freedom of choice.

As a high level of autonomy or control may entail a high level of responsibility, from the standpoint of the controlling person, the opposite may not be valid. A lack of control does not necessarily establish lack of responsibility from the standpoint of the controlled party. For instance, a person might act without control due to the influence of drugs. We might still consider this person to be responsible for his actions despite his lack of control. For example, if this person voluntarily took the drug, knowing that it will lead to loss of control. Harry Frankfurt demonstrated that even when a person unknowingly and unintentionally gets himself into a situation where he has no alternate course of action, he may still be deemed responsible for the consequences of this unavoidable choice. For instance, if that person internally desires this same course of action.<sup>55</sup>

So far, we demonstrated links between control, free choice, and responsibility. However, the free choice paradigm has its challenges. Other theories of responsibility tried to address these challenges by disconnecting free choice and responsibility. They raise scenarios

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<sup>54</sup> Bitton, *Intelligence Agents*, *supra* note 1.

<sup>55</sup> Frankfurt, *supra* note 14.

where one may be responsible for  $X$  regardless of not exercising free choice concerning  $X$ .<sup>56</sup>

However, if control is a factor in free choice and consequently of moral responsibility, does that mean that if there are occasions of responsibility absent free choice, then control cannot be a marker of responsibility or a responsibility base? Control may remain relevant as a responsibility base even regarding some competing accounts of the free-choice paradigm. One theory competing with the free-choice paradigm is Meir Dan-Cohen's proposal of a concept of responsibility for one's self.<sup>57</sup> As the free will paradigm blames  $X$  for what he chooses to do, Dan-Cohen's theory views  $X$ 's responsibility in terms of who  $X$  is. It views the complex and dynamic self of  $X$  as comprising many aspects, such as  $X$ 's body, biography, and even  $X$ 's young children. Each aspect may serve as a responsibility base. By ascribing responsibility to  $X$  for the action of  $X$ 's young child, we determine the boundaries of  $X$ 's self. Ascribing responsibility to  $X$ , in this case, reflects the view of his child as part of  $X$ 's self. In other words, the child, being part of  $X$ 's self, is therefore a responsibility base.

When reviewed carefully, the boundaries of the self, suggested as boundaries of moral and legal responsibility, are primarily influenced by elements we control. Physical objects and persons under our guidance can all serve as constitutive elements of oneself. While Dan-Cohen presents his theory as an alternative to the traditional free-will paradigm, it is clear that the self is constituted very much by elements that a person largely controls. A person's body or small children are good examples. Being part of oneself, a person's body or small children are all responsibility bases. If person  $X$  moves his body and hits person  $Y$ , or if  $X$  hires a person to hit

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<sup>56</sup> For example, Frankfurt offers a case of a person  $A$  who makes a decision to do  $X$  because he thinks  $X$  should be done without knowing that another person has the power and the will to make sure  $A$  does  $X$  and only  $X$ . In this case,  $A$  should be responsible for  $X$  irrespective of the fact that he can only do  $X$ . *Id.* at 830.

<sup>57</sup> Meir Dan-Cohen, *Responsibility and the Boundaries of the Self*, 105 HARV. L. REV. 959 (1992).

$Y$ ,  $X$  is deemed responsible for hitting  $Y$ .<sup>58</sup> Whether one looks at the issue of moral and legal responsibility through the lens of the traditional free-will paradigm or other approaches, such as Dan-Cohen's, one reaches a similar conclusion. A high level of control of person  $X$  over person  $Y$  grounds  $X$ 's responsibility for the consequences of  $Y$ 's acts, including consequences to  $Y$ . Once again, the reference here is to a general notion of responsibility as accountability, without definition of its scope or nature.

According to a traditional free-will approach, the handler is responsible for the consequences of the agent's actions due to the direct control she exercises over the agent's actions.<sup>59</sup> In Dan-Cohen's terms, this control transforms the agent into an extension of the handler's self.<sup>60</sup> Similarly, we see a screwdriver as an extension of the technician's body or a pen as an extension of the writer. With the recruitment and increasing control of an agent, the agent begins merging into the handler's self, just like the puppet on a string merges into one entity with the puppeteer.

#### IV. CONCEPTUALIZING CONTROL AS COOPERATION

Handling relationships are a unique joint activity. It is a kind of cooperative relationship, as handler and agent perform various tasks together. Such tasks cannot be completed unless both parties cooperate. For instance, a joint task could be to collect data  $D$  from point  $P$  in time  $T$ . Another example would be the joint task of secretly placing object  $O$  in point  $P$  in time  $T$ .

Cooperation always entails concessions about preferences and entails prior consent,

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<sup>58</sup> Dan-Cohen's theory of responsibility allows responsibility for elements included within the self of  $X$  with regard to which  $X$  does not necessarily exercise control. Such are, for example, the cases of moral luck and events incorporated into  $X$ 's biography, irrespective of not being under the control of  $X$ . However, even according to Dan-Cohen, most of the responsibility bases of oneself are elements that are in one's control. *Id.*

<sup>59</sup> *See id.*

<sup>60</sup> *See id.*

whether voluntary or coerced, to a particular joint action.<sup>61</sup> Handler and agent must coordinate time, location, and method of operation.<sup>62</sup> Unless the persons cooperating are entirely in agreement with regard to preferences, such agreement on time, location, and method must involve some concession of at least one party. To place object *O* in point *P* in time *T*, agent and the handler must first decide to perform the task. Subsequently, they need to decide on the manner of performing the task, including, for instance, the time and place. Assuming that both handler and agent need to bridge different preferences about what tasks to perform and how to perform them, one needs to ask: how do they do it? Had the agent and handler been engaged in a mutual and relatively equal relationship, they could have established cooperation through mutual concessions. For example, the handler and agent could agree on the four relevant parameters (the task, the object, the time, and the place) by way of compromise.<sup>63</sup> However, handler-agent relationships are typically asymmetrical, not equal or mutual. In typically mutual and equal relationships between *X* and *Y*, *X* does not *recruit* *Y*. Moreover, in friendly relationships, *X* does not *control* or *handle* *Y*. Recall that handling requires a high level of control over the agent. It is, therefore, the handler that determines tasks. The handler instructs the agent about the time, place, and manner of their performance. This means that the agent typically enables cooperation through concessions when adapting a task and its implementation parameters. The agent simply performs the tasks that the handler sets. He must perform these tasks according to the handler's performance parameters. Cooperation is enabled by the agent

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<sup>61</sup> *Cooperation*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/cooperation> (last visited April 19, 2021) (defining 'cooperation' as: "the act of working together with someone or doing what they ask you").

<sup>62</sup> ROBERT AXELROD, *THE COMPLEXITY OF COOPERATION: AGENT-BASED MODELS OF COMPETITION AND COLLABORATION* 40–66 (Phillip W. Anderson, et al., eds., 1997); Robert Axelrod & William Donald Hamilton, *The Evolution of Cooperation*, 211 *SCIENCE* 1390 (1981); Armin Falk & Urs Fischbacher, *Modeling Strong Reciprocity*, in *MORAL SENTIMENTS AND MATERIAL INTERESTS: THE FOUNDATIONS OF COOPERATION IN ECONOMIC LIFE* 193 (2005).

<sup>63</sup> They could, in theory, mutually adopt some third option with regards to one or more of the parameters.

accepting the handler's instructions. The grounds of the agent's acceptance require analysis.

Acceptance or consent, in theory, could be voluntary. In such a case, *X* accepts *Y*'s instructions and preferences because *X* *wants* to accept them. *X* accepts *Y*'s instruction only because *X* *wants* to accept these instructions and not because he *must* accept them. *X*'s concessions, however, could be the result of compulsion or authority. In such a case, *X* allows some control over *X*'s preferences and actions to *Y* because *Y* exercises some authority over *X*. *Y* has some actual or potential coercive means that drive *X*'s subjection.

Voluntary concession of control in cooperative relations is quite common. Friendship and marriage are good examples of voluntary concession, which may result from the social nature of these relations. A marriage's nature may lead partner *X* to allow his partner *Y* to determine what to do tomorrow and how to do it even if *X* prefers to do something else. *X* voluntarily agrees to act based on *Y*'s preferences. The day after, *X* and *Y*'s partnership may lead *Y* to reciprocate.

Involuntary concession of control within cooperative relations is also quite common. For instance, commander-soldier relationships or manager-employee relationships match this pattern. Authority and sanctions of various types and measures are the grounds of involuntary control in these cooperative relationships. For example, orders in the army and their enforcement mechanisms guarantee soldiers' cooperation. The potential sanction of dismissal in employment relationships may also be grounds of involuntary control. Fear of sanction leads the soldier or the employee to hand cooperative control over to the commander or manager, respectively.

It might seem inconsistent to speak of cooperation between two persons *X* and *Y* when only *Y* accepts *X*'s instructions due to *X*'s coercive powers. It sounds as inconsistent as saying

that the slave cooperates with his master. Similarly, some references to cooperation exclude coercion. For instance, when Goldsmith and Posner explain the creation of customary law, they differentiate between cooperation and coercion.<sup>64</sup> They explicitly refer to a pattern of cooperation by excluding cases where two states follow a rule due to state *X* coercing state *Y* to follow the rule.<sup>65</sup> In contrast, in organizational theory, trust and authority are frequently grounds of cooperation.<sup>66</sup> Both trust and authority largely parallel the voluntary and coercive grounds of control to which this article refers. According to this approach, joint activity resulting from authority remains within the boundaries of cooperation.

The definition of cooperation for the sake of this argument is as follows: person *X* and person *Y* are in a cooperative relationship if they both invest time and energy in an attempt to perform an agreed task that has predefined performance parameters of time, place, and manner. The parameters for the joint operation may be agreed upon or forced upon any of the parties. The definition should be, therefore, treated as value neutral. The task might be horrible and so might be the means that *X* applies in leading *Y* to cooperate. Still, if *Y* performs and takes a share of the task, *X* and *Y* engage in cooperation according to this article's definition. Actually, in a bad movie, when the interrogator steps into the interrogation room, he typically makes a "friendly" offer to the suspect: "will you cooperate with us?" The suspect's assistance is called cooperation, although entirely involuntary. Therefore, the focal point of the proposed definition of cooperation is the task carried out using the energy or capabilities of two or more

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<sup>64</sup> Eric A. Posner & Jack L. Goldsmith, *A Theory of Customary International Law*, 66 U. CHI. L. REV. 1113, 1123-27 (1999), <https://core.ac.uk/download/pdf/234136256.pdf>.

<sup>65</sup> *Id.*

<sup>66</sup> In the literature on organizational theory there is a debate about the sources of cooperation and the desirability of each of its sources. Instead of voluntary and involuntary sources of control, it is named *authority* or *trust*, respectively. See Katinka Bijlsma-Frankema & Ana Cristina Costa, *Understanding The Trust-Control Nexus*, 20 INT'L SOCIO. 259, 266-69 (2005).

cooperating parties. The motives and the means, in this regard, are irrelevant to the question if *A* and *B* cooperate.

The grounds of and power to control, whether voluntary or forced, seem mostly exclusive to one another. In cases where sources of cooperation are voluntary, compulsory control seems unnecessary and hence typically absent. The opposite case seems similarly reasonable. In cases where the cooperating party establishes control through involuntary means, the cooperative parties are usually in a conflict that leaves no room for voluntary sources of control. A prison is an extreme example of involuntary cooperative relationships. The prisoner cooperates with his guard. However, he only cooperates due to the guard's nearly absolute control, achieved mostly through authority and the power of sanctions. In such relationships, for both practical and probable emotional reasons, there is neither need nor possibility of cooperation based on voluntary choice.

In contrast, in a scouting youth group, a child cooperates with his instructor; however, the child seems to accept the instructor's authority voluntarily.<sup>67</sup> Therefore, these cooperative relationships hardly use any compulsory sources of control. Even if compulsion had been relevant to such relationships, it is practically unnecessary. Moreover, in reciprocal or friendly relationships, demonstrating mutual trust and closeness seem to be primary sources and motives for concessions. When *X* accepts his friend *Y*'s proposal, *X* accepts it partly because *X* does not *have to* accept it. If *X* realizes that *Y* asks him to do something because he thinks that he has some authority over *X*, this understanding in itself might motivate *X* not to accept the proposal. Once coercion finds itself in *X*'s relationship with his friend, *X* realizes that this is

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<sup>67</sup> The film *G.I. Jane* offers a good example. Trainees of the Navy SEALs allow full control over their actions to the sergeant. However, all they need to do to regain control over their actions is to step into the center of the yard and ring a bell.

probably not a friendly relationship anymore.

At this point, it is crucial to clarify the exclusionary nature of coercive and voluntary grounds of control. When the cooperating persons establish control through coercion, voluntary elements vastly diminish but do not necessarily disappear. As one person is coerced to hand over control of his preferences and actions, some voluntary elements may still exist, although probably very weakly. For example, prisoner-guard cooperative relationships are primarily coercive. The prisoner cooperates because he has to, but that does not mean that the prisoner's cooperation with the guard is fully coerced. The prisoner may cooperate with the guard and participate in some social activity in prison out of his own will.<sup>68</sup> However, his will remains a very marginal aspect of prisoner-guard cooperation. As a result, the argument that coercion and voluntary grounds of control are mutually exclusive means that one practically excludes the other in such a manner that when one exists, the other diminishes dramatically, although not necessarily to zero.

In summary, one of the markers or elements of cooperation is concession. When  $X$  cooperates with  $Y$ , it entails the surrendering of some of  $X$ 's preferences to  $Y$ .<sup>69</sup>  $X$ 's abdication

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<sup>68</sup> See, e.g., Christina Capatides, *Six Inmates Who Saved Guard's Life Rewarded with Shorter Sentences*, CBS NEWS (June 23, 2017, 4:55 PM), <https://www.cbsnews.com/news/six-inmates-who-saved-guards-life-rewarded-with-shorter-sentences/>.

<sup>69</sup> It should be clarified that for  $A$  to cooperate with  $B$ ,  $A$  does not necessarily give up his personal autonomy.  $A$  (or  $B$ ) should, however, give up on some of its preferences, or at the very least, have a higher priority for  $B$ 's preferences. A voluntary concession concerning some of  $A$ 's free will does not necessarily undermine  $A$ 's personal autonomy. For the primary two mostly parallel hierarchical models, see Harry Frankfurt, *Freedom of the Will and the Concept of a Person*, 68 J. PHIL. 5 (1971); Gerald Dworkin, *The Concept of Autonomy*, 12 GRAZER PHILOSOPHISCHE STUDIEN 203 (1981) (Austria); and Irving Thalberg, *Hierarchical Analyses of Unfree Action*, 8 CANADIAN J. PHIL. 211 (1978). For Frankfurt's more recent improvement of the hierarchical model, see Harry Frankfurt, *Identification and Wholeheartedness*, in RESPONSIBILITY, CHARACTER, AND THE EMOTIONS: NEW ESSAYS IN MORAL PSYCHOLOGY (1987). For Dworkin's account, see Gerald Dworkin, *Autonomy and Behavior Control*, HASTINGS CENTER REPORT (1976). For three more recent and promising developments of the hierarchical model, see John Christman, *Defending Historical Autonomy: A Reply to Professor Mele*, 23 CANADIAN J. OF PHIL. 281, 286-88 (1993); Michael E. Bratman, *Identification, Decision, and Treating as a Reason*, PHIL. TOPICS, Fall 1996, at 1, 2-4 (1996); Laura Waddell Ekstrom, *A Coherence Theory of Autonomy*, 53 PHIL. AND PHENOMENOLOGICAL RSCH. 599, 614-15 (1993). For a comprehensive summary of the evolution of the hierarchical models, see James Stacey Taylor, *Introduction*, in PERSONAL AUTONOMY: NEW ESSAYS ON PERSONAL AUTONOMY AND ITS ROLE IN

of preferences is the result either of voluntary concession or coercion and authority. *X* may be willing to concede some of his preferences for the sake of cooperation. Alternatively, *Y* might force *X* into handing over some of his freedom in order to enable cooperation with *Y*. These sources of control (volition or compulsion) are typically exclusive. When one is applied, the other diminishes almost entirely and most likely is not necessary.

This insight leads to the unique aspect of controlling an intelligence agent. The handler establishes these cooperative relationships based on both grounds of control, voluntary and involuntary *simultaneously*. In an atypical combination, the voluntary and involuntary control sources in handling do not exclude one another. In handling an agent, good relationships and authority uniquely co-exist. Although relatively rare, the co-existence of voluntary and involuntary grounds of control appears in other types of cooperative relationships. For instance, in certain stages, parenthood entails control over a child, partly through coercion and partly by consent.

#### V. VOLUNTARY AND COERCIVE CONTROL IN HANDLING AN AGENT

The voluntary grounds of control in handling relationships depend upon the handler's ability to create trust and personal relationships with the agent. The agent is expected to develop a personal sense of commitment to the handler. In many cases, as mentioned above, the agent would be a volunteer and, therefore, initially willing to be subjected to the handler's control. But the co-existing involuntary element of control calls for an explanation.

Even in cases of clear voluntary handling relationships, authority and compulsion always hover over the relationship. Once the agent's cooperation is evident, the agent has crossed the line of no return. From this point in time, the handler holds the weapon of the

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CONTEMPORARY MORAL PHILOSOPHY 1, 1-29 (2005). For an amendment and application of the hierarchical model in the handler-agent case, see Bitton, *Intelligence Agents*, *supra* note 1.

agent's potential exposure. The agent is now vulnerable to extortion and may fear a harmful response if he stops cooperating.<sup>70</sup> The agent is exceptionally vulnerable and exposed to his handler's potential shift into a non-friendly mode of action. Once recruited, he is at the handler's mercy. Harming an agent is usually not in the interest of the employing state. However, the fear is always there, nevertheless. Due to the extreme risk, a rational agent will take it into serious account, irrespective of its low probability. Marcus Klingberg, who spied for the KGB against Israel, described the combination of voluntary and involuntary elements of handling in chillingly vivid terms:

I quickly analyzed the situation. If I refuse, I am taking the risk of bringing the situation to boiling temperature. They may give up. May not insist. And maybe they will not. Maybe they will not give up . . . The presumption behind these relations was that they are voluntarily established and hence their strength. Not once, the question of "what if" crossed my mind. What if I wish to quit? That I could quit just the way I joined . . . Actually, it was the first time where for a second, I raised in my mind the option of the Russians moving to the level of extortion. However, I immediately rejected it. It was obviously the worst alternative. At least this way, when we maintain voluntary relations, there is respect and appreciation, and the meetings could be conducted in good spirit. The move to a different level of relations will have enormous consequences. The

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<sup>70</sup> See, for example, the case of Marwan Ashraf as a typical example of the grounds for concerns of agents. Ashraf, one of the most senior recruited agents ever operated within the leadership of an Arab country, served as an agent for the Mossad from the late 1960s to the mid-1970s. Following his exposure after many years as an ex-agent of Israel, he was mysteriously found dead after falling from his apartment balcony in London. One of the speculations was that the Mossad had "unfinished business," and dealt with Ashraf violently. As irrational as this speculation sounds, due to secrecy and natural temptation for conspiracy theories on these matters, such stories reflect a potential concern to any recruited agent. Uri Bar-Joseph, *The Intelligence Chief Who Went Fishing in the Cold: How Maj. Gen. (res.) Eli Zeira Exposed the Identity of Israel's Best Source Ever*, 23 INTEL. AND NAT'L SEC. 226, 226-27 (2008).

voluntary relations leave some flexibility on my end . . . No. I decided I will not refuse. The relations with the Russians must not turn into coercion.<sup>71</sup>

The combined voluntary and coercive grounds and their unique co-existence create an exceptionally high degree of control. If the level of responsibility is linked to the level of control, and the level of control is exceptionally high due to its dual-source, then the responsibility for handling relationships may very well be exceptionally high.

One may wonder why the aggregation of two combined grounds of control should be necessarily more potent than one alone. Consider control in handling relationships generated on both voluntary grounds,  $V$ , and coercive grounds,  $C$ , and there exists another type of cooperative relationship in which only one ground applies, based on voluntary willingness. Let control power in this case be marked  $T$ .<sup>72</sup> The handler's total control is potent because, in handling, both sources of control co-exist in an exceptional manner. Returning to our example, why should  $T < V + C$  necessarily be correct?  $T$  may be mighty and, consequently, may exceed  $V + C$ , nonetheless. In theory,  $T$  may indeed be that powerful in comparison to the dual-grounded control in handling. In practice, this is supposed to be very rare, if practical at all. The reason is that both grounds of control in handling, in our case, each of  $V$  and  $C$  alone, are exceptionally high. The coercive grounds entail the threat of a long prison sentence or even death.<sup>73</sup> In many cases, it might put the agent's family at a similar risk.<sup>74</sup> One can hardly think of a more powerful coercion. The voluntary grounds of control are similarly potent. Handling usually

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<sup>71</sup> MA KLINGBERG & MICHAEL SFARD, HAMERAGEL HA'AHARON [The Last Spy] 224-25 (2007) (Isr.).

<sup>72</sup> Recall that relationships in which control is based purely on one ground (voluntary or coercive) is hardly possible. In most cases, the "absent" ground is not absent, but dramatically diminished. When I refer to cases of "one ground of control only," I refer to these cases. Namely, I refer to situations where one source of control is exceptionally dominant over the other.

<sup>73</sup> See Kilian, *supra* note 36.

<sup>74</sup> See Brendan Cole, *CIA Spy and His Family Extracted from Russia are in Danger for the Rest of Their Lives, Says Friend of Murdered Ex-FSB Whistleblower*, NEWSWEEK (Sept. 12, 2019, 12:30 PM), <https://www.newsweek.com/russian-spy-felshtinsky-smolenkov-putin-1458929>.

requires the transformation of an adversary into a partner. The level of commitment and willingness, amidst terrifying risks, must be at the top end of personal commitment. The result is, therefore, distinct. Both grounds of control in handling, coercive and voluntary, are each potent on their own. Considering their rare co-existence leads to the conclusion that control in handling is more compelling than in most cooperative relationships.

Relationships in which both sources of control co-exist are exceedingly rare. For instance, voluntary and involuntary grounds of control co-exist in parent-child relationships.<sup>75</sup> Similarly, commander-subordinate team relationships in elite military units or teacher-student relationships, may feature this pattern. In some cases, religious leaders and members of their congregations may demonstrate dual grounds of control. These examples suggest that agent-handler relationships belong to a particular category of significant and influential relationships.

These relationships extend far beyond control over one's actions for both the controlling and the controlled persons, as far as being a constitutive element in oneself. As such, and in Dan-Cohen's terms, these strong relationships reshape the controlling self's boundaries.<sup>76</sup> They are, therefore, an aspect in the handler's self that constitutes a responsibility base.

There obtains a significant difference between responsibility for an event and responsibility for a person. In similar, but not identical terms, Dan-Cohen defines these two types of responsibilities as object-responsibility and subject-responsibility.<sup>77</sup> The dual-ground control of the agent by the handler constitutes responsibility for the agent as a person. It is a particularly wide-ranging type of responsibility, including for events, although indirectly. The

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<sup>75</sup> See generally Cole, *supra* note 74.

<sup>76</sup> Dan-Cohen, *Responsibility and the Boundaries of the Self*, *supra* note 57, at 970.

<sup>77</sup> See *id.*

handler may be responsible for an event initiated by the agent because he is responsible, as a whole, for the agent's actions. He may be responsible even for events of which he was unaware that the agent was setting in motion. Similarly, a parent may be unknowingly responsible for events initiated by his child and, at times, even unwillingly.<sup>78</sup> Accordingly, if an agent in the field takes an undesired action as part of his activity, the handler may be responsible for this action's consequences, although he did not order it.

Understanding the unique nature of control in handling relationships may help tackle some of the moral and legal issues involved in running agents. For example, "Role Distance" involves a familiar exemption of civil servants from personal responsibility for their state-sponsored conduct.<sup>79</sup> Dan-Cohen illustrates this concept with the extreme example of the executioner, whom we do not hold responsible for his act of killing a person sentenced to death.<sup>80</sup>

One way of presenting this exemption is through the concept of defense in criminal law. One such defense is the exemption of a civil servant based on the Execution of Public Duty.<sup>81</sup> According to Dan-Cohen, the executioner does not require a defense or a justification, as he bears no responsibility in the first place.<sup>82</sup> The executioner follows salient formal and ceremonial protocol. He wears a uniform and hides his face behind a mask, thereby distancing himself from the act.<sup>83</sup> These methods clarify that the person behind the mask is not involved.

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<sup>78</sup> This conclusion is, in part, because the parent controls the child's environment. This control is the source of responsibility for the child's unknown actions because, based on this control, the parent should have been aware of the child's actions, and should be responsible for their consequences.

<sup>79</sup> MEIR DAN-COHEN, HARMFUL THOUGHTS: ESSAYS ON LAW, SELF, AND MORALITY 233-35 (2002).

<sup>80</sup> *Id.* at 233.

<sup>81</sup> On the criminal defense of lawful capacity of duty or Execution of Public Duty, see MODEL PENAL CODE § 3.03. For a comparative analysis of this defense, see Paul H. Robinson, et al., *The American Criminal Code: General Defenses*, 7 J. LEGAL ANALYSIS 37 (2015).

<sup>82</sup> DAN-COHEN, HARMFUL THOUGHTS, *supra* note 79.

<sup>83</sup> *Id.*

An uninvolved person cannot bear any personal responsibility for an act.<sup>84</sup> The act of killing is “external” to the self of the executioner. In Dan-Cohen’s formula of responsibility, the executioner’s act falls outside the boundaries of his self.<sup>85</sup> The act thus falls outside his range of personal responsibility.

The handler should be similarly exempted from personal liability for handling. After all, the handler is a civil servant who should not bear personal responsibility for his acts within his duty. However, analysis of the kind of control the handler exercises might suggest the handler should be treated differently. Unlike the executioner, the handler goes out of her way to maintain a personal relationship with the agent. Formalities are pushed aside, and an effort is made to create an atmosphere of trust and personal commitment.<sup>86</sup>

The concept of Role Distance, which is supposed to serve as a defense for the handler, or render a defense unnecessary, seems to produce contradicting results.<sup>87</sup> The concept of Role Distance exempts *X* from responsibility for *Y*, provided *Y* was clearly and noticeably carried out within *X*’s job or as part of *X*’s role. As Goffman suggests, the ceremonial aspects signal that when performing *Y*, it is not the person *X* who performs *Y*.<sup>88</sup> It is instead *X<sub>c</sub>*, the civil servant in *X*. However, as the nature of handling shows, handling relationships are based on using formal

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See H CJ 3648/06 Pollard v. Acting Prime Minister (“[W]ithin all the arguments presented by the plaintiffs as proven facts, they have also indicated that respondent 4 [Raphael Eitan, the Chief of Lakam and Chief Handler of Pollard] had not been operating on his own, but rather operated on behalf of the Government of Israel. If this is the case, it follows that no personal and exclusive responsibility should be ascribed to him as argued . . . .” (quoting Chief Justice Beinisch)) (unpublished) (on file with author) (Isr.). Israeli Supreme Court Chief Justice Beinisch may have taken for granted the concept of Role Distance as a defense for a handler. Beinisch dismissed Pollard’s appeal against the appointment of his senior handler as a minister. Beinisch argued that even if all of Pollard’s accusations against the handler were correct, the handler should bear no personal responsibility, as he acted on behalf of the government of Israel in exercising his official duties. However, as I have suggested, a significant portion of the handler’s control is obtained through personal rather than formal sources of cooperation, and the defense of Role Distance may not be that trivial in this case.

<sup>87</sup> See DAN-COHEN, HARMFUL THOUGHTS, *supra* note 79.

<sup>88</sup> See *id.*

and informal patterns of conduct interchangeably. The handler may be at times friendly and strict, threatening and supportive, friendly and commanding, caring and warning, giving and taking. The concept of Role Distance simply cannot guide us within this inconsistency.

Similarly, when a parent is strict with his child, the parent still acts as the child's parent. However, as being kind and supportive is also part of parenthood, both forms of parental behavior belong to parenting. Like a parent, it is clear that the handler acts within his role when he behaves informally with the agent. Moreover, the agent knows that the informal aspects of handling are indeed part of the handling and an unmistakable part of the handler's role. As a result, the concept of Role Distance does not help determine responsibility in handler-agent relations. As the concept of role distance is based on formalities marking conduct as part of the role, it cannot produce reliable results concerning a role that, by definition, includes informal aspects.<sup>89</sup>

In contrast, the concept of responsibility in terms of cooperation and control may help determine the scope of the handler's responsibility. The handler has more control over handling than the executioner holds over the execution process. As opposed to the concept of Role Distance, through the notion of control, the formalities involved in performing the executioner's role do not express "this is not personal."<sup>90</sup> Instead, they are a sign of a lack of control over the process. Protocols are set, so people follow them, namely, to take control of the hands of those who are performing within the boundaries set by protocol.

If the executioner deviates from protocol, he will be responsible for the killing. He will be responsible if he kills the convicted person a night before or with a sword rather than a lethal

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<sup>89</sup> At least, it cannot lead to the conclusion that Chief Justice Beinish was wrong in ascribing a Role Distance defense to Eitan.

<sup>90</sup> See DAN-COHEN, HARMFUL THOUGHTS, *supra* note 79, at 234–35.

injection. Deviating from protocol indicates control, and this, in turn, implies responsibility. In sheer contrast to the executioner, the handler largely controls the process of recruiting and handling the agent. The centrality of informality does not suggest that the relationships are impersonal, as Role Distance may suggest. Rather, it indicates that the handler largely controls the process. Although he follows orders from his superiors, the task of handling is, to no small extent, under his control.

*A. Control as a marker of responsibility in handling*

The idea of dual-ground control can guide us in analyzing additional moral and legal issues concerning handling. As mentioned, responsibility for the agent's wellbeing and the consequences of his activity is a broad notion. At first glance, it seems vague.<sup>91</sup> One of the reasons for the unclarity is the many faces of responsibility and the many questions involved. It is unclear when a handler or a state is responsible for damages or consequences occurring during or due to the handling. Even when a handler's or state's responsibility is determined, the scope of remedies is unclear. For how long will the state be responsible? Is the state responsible for the agent's family? What types of harm should the state cover? It is also unclear what types of responsibility can be and should be ascribed to the handler at both legal and moral levels. This article cannot offer a complete account of such a notion of responsibility. The legal doctrine of responsibility in each case may be different concerning different states and contexts. However, the notion of dual-ground control offers a framework for the theoretical analysis that underpins such doctrine.

*B. Control and temporal aspects of responsibility*

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<sup>91</sup> On the complexity of the concept of responsibility, see Galen Strawson, *The Impossibility of Moral Responsibility*, 75 PHIL. STUD. 5, 12–16 (1994); Watson, *supra* note 6; Dana K Nelkin, *Do We Have a Coherent Set of Intuitions about Moral Responsibility?* 31 MIDWEST STUD. PHIL. 243, 243–45 (2007); Marina Oshana, *Ascriptions of Responsibility*, 34 AM. PHIL. Q. 71, 71–76 (1997).

As the level of control might indicate the degree and range of a handler's responsibility, a dramatic shift in control could indicate a dramatic shift in responsibility towards the agent. If control is a marker of responsibility, one needs to identify when control is established and the point in time when control is diminished or completely lost. These points may indicate the establishment of responsibility. As recruitment does not succeed before the handler gains profound control, identifying the starting point in responsibility is a relatively simple task.<sup>92</sup> It is typically more complicated to identify the points in time when control is lost.

There are various ways for a handler to lose control of his agent. For instance, when the agent wishes to cease engaging in risky operations. Alternatively, when the agent's services are no longer necessary. Control is also lost when the agent deviates heavily from his framework of instructions, and thus goes rogue. The clearest example is when an agent turns into a double-agent. Once a double-agent, the agent's handlers no longer exercise control over him. A double-agent can reverse the scenario and potentially gain some control over his handler.<sup>93</sup> A less clear example is when the agent becomes undisciplined and takes independent initiatives that are either forbidden or clearly outside his activities' scope. For instance, when an agent is warned not to perform  $x$  as part of his activity and performs  $x$  nonetheless.<sup>94</sup>

### *C. Control and the scope of responsibility*

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<sup>92</sup> Bitton, *Intelligence Agents*, *supra* note 1.

<sup>93</sup> The double agent may be responsible for the consequences of his manipulative control over his handler. However, under these conditions, he exercises a weaker control over the handler compared to typical control of a handler over an agent. The double agent, for instance, is not capable of using the exposure threat.

<sup>94</sup> One helpful test for determining control over  $X$  would be the test of an alternative path. If the handler could have influenced events so that the agent had performed  $Y$  (and if the handler wanted  $X$ ), it only makes sense to view  $X$  as an event caused under the control of the handler. Responsibility for handling is based on control, but it should be sensitive to the temporal context of control. Control should be measured at the right point in time. The test of control over the agent's actions refers to the point in time when the agent made his choices and acted. For instance, an agent can be arrested five years after he ceased his operations. At this point, the handler exercises zero control over the agent. But this does not negate the handler's responsibility, for this is not the point in time that matters. What matters is what actions of the agent led to his arrest, and more importantly, if the agent took these actions in the past and under the control of the handler.

A handler may be responsible for the financial consequences of the handling. Naturally, and for many reasons, the employing state will most likely bear this cost.<sup>95</sup> Financial consequences vary greatly. Different agents suffer different losses. Each element of the financial aspects, even regarding the same agent, may vary broadly. For instance, the employing state may decide to pay the agent a monthly stipend to cover his income loss once exposed. Even the level of this one aspect of responsibility may vary. In fulfillment of its responsibility, the employing state can always pay the agent a higher amount and for a more extended period. The marker of control may assist in determining the scope of responsibility in such cases. The scope of responsibility correlates with the scope of control over the agent. For instance, as the handling lasts longer and directs the agent towards more dangerous tasks, responsibility should rise accordingly. In this respect, the duration of handling and the associated risks are markers of control that, in turn, is a marker of responsibility.<sup>96</sup>

At first glance, responsibility is not a dichotomous notion, but a range. We are, therefore, occupied with two questions concerning responsibility. We are first interested in determining if  $X$  is responsible for  $Y$ . We are then interested in determining to what extent  $X$  is responsible for  $Y$ . The notion of control similarly reflects a range. As control is a marker of responsibility in handling, the level of the handler's control over the agent may be a marker of

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<sup>95</sup> The employing state enjoys the products of handling; the handler does not, at least not directly. At times, the handler even risks his own life in the process, but the states typically assume the liability ascribed to its employees while acting within their role. Another division of risk would become inefficient in addition to being unjust, and handlers will not take the job if it carries such substantial financial risks.

<sup>96</sup> For instance, the Israeli government has defined standards for measuring the level of responsibility towards "burned" agents. The Israeli government's criteria rest on the duration of operations, the associated risk, the contribution of the operations to Israel's security, and the intensity of the operations. These are all markers of control. Bringing an agent to a long service or leading him to intense or risky service requires a high level of control over the agent. Naturally, for the handler to manage to convince the agent to operate for a longer time or under higher risk, the handler needs a greater level of control. See Resolution 118 of the Government of Israel (13 Jan. 1994); HCJ 5499/95 Jaber Aref v. The Prime Minister of Israel; HCJ 2221/99 Plonim v. The Prime Minister of Israel. On the Israeli policy of responsibility for "burned" agents and human sources, see Menachem Hofnong, *The Price of Information: Reception and Rehabilitation of The Security System's Collaborators in the Cities of Israel*, 18 LAW AND GOVERNANCE 55 (2017) (Isr.).

the scope of the handler's responsibility. The higher the level of control over the agent, the higher the responsibility for the handling. There is always a critical mass of control below which the handler, although exercising some level of control, can no longer be responsible. In contrast, in moral and legal discourse, control typically serves as a dichotomous parameter. The moral agent either *is* or *is not* in control when acting. Once exceeding a certain critical mass of control, responsibility is determined, and the level of control seems not to play a role any further. In contrast, this article argues that control is not merely a marker of responsibility but also a marker for the scope of responsibility. Have we reached a contradiction?

The level of control does not determine the *level* of responsibility but rather the *range* of responsibility. According to conventional and intuitive moral and legal thinking, we perceive control as a dichotomous parameter. For instance, for person *A* to be responsible for event *X*, *A* needs to exercise a *critical level* of control over the event (*C*). One indication of such control is *A*'s will and ability to have acted differently. If *C* crosses some predefined critical mass, then *A* is considered responsible for *X*. If *C* is even higher, it does not change this conclusion, for a person is not responsible and then even more responsible for an event. A person is either responsible or not. Recall that this paper argues that the level of control over the agent dictates the level of responsibility. It should lead to the conclusion that more control equals more responsibility. This conclusion seems to contradict the conventional dichotomous nature of responsibility. But it does not.

Responsibility for a *person* is a range-based parameter, as opposed to the dichotomous responsibility for an *event*. Responsibility is a dual-phase range of both the aspects for which one is responsible and the magnitude of responsibility concerning each aspect. A parent is responsible for his very young child. The primary connection to his child entails responsibility

for certain events caused by his child and for specific duties towards his child. Responsibility for a *person* is context-based. For instance, a parent is responsible for a broader range of events and duties concerning his child than the child's teacher. Yet the teacher seems to have a higher degree of responsibility concerning the same child compared to a neighbor.

This article suggests control is the differentiating factor concerning the degree of aspects and duties for which one is responsible concerning another *person*. The level of control can also guide us regarding the magnitude of each duty. The level of control does seem to correlate to the range of responsibility concerning each duty. If this is the case, then this article's argument does not deviate from conventional moral thinking. It only offers a rationale to explain it. For instance, once a person reaches a critical level of control over an *event*  $R_1$ , that person may be 100% responsible for  $R_1$ .<sup>97</sup> In principle, more control over *event*  $R_1$  will not involve more responsibility for  $R_1$ . A more extensive level of control concerning a *person* and not a particular *event* will lead to a broader range of duties towards the controlled *person*, like  $R_2, R_3, \dots R_n$ .<sup>98</sup> The responsibility I address in this paper is mainly the responsibility of the handler to the agent in general and not for specific events that the agent initiates or specific duties towards the agent. Accordingly, a high level of control is a marker of profound responsibility towards the agent as a person. It means more duties towards the agent.

Furthermore, it means that each one of these duties is a relatively strong one.

#### *D. Control and other considerations*

The notion of dual-ground control helps explain the level of the handler's and employing state's responsibility. What stops us from making a definitive conclusion about the actual level of responsibility towards the agent is the understanding that it is only one out of

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<sup>97</sup> In this example, I assume that each event is the result of one, and only one, different aspect of responsibility.

<sup>98</sup> Inevitably, a more comprehensive range of responsibility may indicate more bases of control. It may also mean a more profound responsibility for a particular responsibility base.

many considerations in handling. Other considerations may be relevant. Some may support more profound responsibility towards the agent, like the need to incentivize future agents. Some considerations might support demoting the level of responsibility, such as an agent's bad conduct after termination of his services. This paper offers a clearer understanding of the level of responsibility towards the agent, assuming all other considerations are absent.

## **VI. CONCLUSIONS**

Relationships of handling in intelligence are exceptional in almost every sense. This paper argues that one exceptional parameter is the handler's level of control over the agent. This control is unique due to its dual-grounds pattern. It is the combination of both coercive and voluntary grounds of control. As these grounds are typically mutually exclusive, their co-existence in handling is unique. In this regard, handling resembles patterns of relationships, such as parenthood during childhood. This paper offers a link between control and responsibility. In the proposed argument, responsibility refers to a person rather than to specific events or duties. As control is exceptionally potent in handling, this paper argues for a relatively high level of commitment towards agents by their handlers. Moreover, as control is a marker of responsibility, gaining and losing control serves to establish or waive responsibility. An argument for a deep commitment of handlers to agents is insufficient for answering the needs of practical guidance of handling. For other than responsibility for the agent's wellbeing, handling involves other considerations, some of which may compete with a handler's commitment towards the agent. The eventual and specific practical guidance must result from balancing these duties together.

The next phase of research should be the slow construction of this guidance. It should target the construction of a more detailed framework of proper treatment of agents. In this

formula, as mentioned, the moral responsibility towards the agent is just one, although a significant building block. Such a formula may be the basis of internal orders for handling. Furthermore, it may be the basis for statutory regulation of handling. Irrespective of the exact normative framework, it will be based on one important principle: the desire to control comes with a duty. The more significant the control, the more significant the duty.